METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

Local governments working together for a better metropolitan region

November 8, 2010

Submitted Online
(www.regulations.gov/search/Regs/home.html#submitComment?R=0900006480b54c95)
Water Docket
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Submitted by Email (vabaytmdl@dcr.virginia.gov)
Department of Conservation and Recreation
Commonwealth of Virginia

Submitted by Email (tmdlcoordinator@mde.state.md.us)
Department of the Environment
State of Maryland

Re: EPA Water Docket ID No. EPA-R03-OW-2010-0736, Draft Total Maximum Daily Load ("TMDL") for the Chesapeake Bay;
Maryland Phase I Watershed Implementation Plan for the Chesapeake Bay TMDL; and
Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan

To Whom It May Concern:

Thank you for the opportunity to comment on EPA's Draft TMDL for the Chesapeake Bay and on Maryland's and Virginia's Draft Phase I Watershed Implementation Plans. Our comments are attached as a .pdf document.

The Metropolitan Washington Council of Governments (COG) is a regional association of 21 local governments in the Washington metropolitan region, whose combined population represents more then one-quarter of the population of the entire Bay watershed. I serve as Chair of COG's Chesapeake Bay and Water Resources Policy Committee, which developed these comments on behalf of the COG Board of Directors. I note that the District of Columbia, which has a different status in the Chesapeake Bay Program than the rest of COG's membership, does not share all of the concerns expressed in these comments.

Should you have any questions or require further information, please contact Stuart Freudberg, COG's Director of Environmental Programs, at (202) 962-3340.

Sincerely,

Cathy Drzyzgula

Cathy Drzyzgula, Chair
Chesapeake Bay and Water Resources Policy Committee
City of Gaithersburg Council

777 North Capitol Street, N.E. Suite 300 Washington, D.C. 20002-4290
Telephone (202) 962-3200 Fax (202) 962-3201 TDD (202) 962-3213 Website: www.mwcog.org

Chesapeake Bay – EPA Draft TMDL & Draft Phase I Maryland & Virginia WIPs COG Comments *(final, 11/08/10)*

Introduction

The Metropolitan Washington Council of Governments (COG) appreciates the opportunity to provide comments and recommendations on the draft Bay TMDL documentation and the draft Maryland and Virginia Phase I Watershed Implementation Plans (WIPs). COG's 21 local government members have long been on record in support of the goal of restoring and protecting the Chesapeake Bay and its tributaries. The TMDL and the related WIPs, however, raise significant concerns about overall feasibility, particularly in terms of the financial capacity of local governments to fulfill all of the unfunded obligations.

COG's major concerns relate to the degree to which the draft documents rely on retrofitting for urban stormwater nutrient and sediment reduction. The levels of retrofit cited in the documents raise very real concerns about physical and financial feasibility, overall effectiveness and local program capacity. C OG and its members are also concerned about the potential implications of the backstop provisions on local stormwater and wastewater programs. Specifically, if other sectors, particularly agriculture, do not achieve their targets, we are concerned that permit-mandated requirements for stormwater retrofits and enhanced nutrient removal (ENR) at wastewater treatment plants in the COG region will be rendered obsolete by backstop provisions.

Our key recommendations are:

- **Include a comprehensive stormwater retrofit cost analysis as a part of the Phase II WIPs –** Including a stormwater retrofit cost analysis as part of the overall analysis of cost affordability and cost effectiveness will maximize the beneficial use of public funds and ensure that governments and landowners are financially able to provide continuing improvements in subsequent years.
- **Reschedule the due date for the Phase II WIPs -** A six month expansion of the period to prepare the Phase II WIPs, , while continuing local efforts to reduce Bay pollution, will allow for greater public participation and more in-depth technical and cost analyses.)
- **Couple any use of federal backstop provisions for urban stormwater with appropriate levels of federal-state matching funds.**
- **Consider conducting a "use attainability analysis" if such funding is not made available, or if other constraints on implementation under the current deadlines prove insurmountable**

Since well before the signing of the C2K agreement, COG's member governments have made substantial efforts to date to reduce Bay pollution. We will endeavor to do our part in the restoration effort by the time the 2017 mid-course re-evaluation occurs. We trust that restoration of the Bay and its tributaries will be a true partnership among all levels of government.

Comments

1. EPA and States Should Address Financial Considerations

As described in EPA's TMDL document (ref. Section 6. Chesapeake Bay TMDL Development, Section 7. Reasonable Assurance & Accountability Framework, Section 8. WIP Evaluation & Draft Backstop Allocations, and Section 10. TMDL Implementation & Adaptive Management), neither the TMDL nor the WIPs address affordability, cost-benefit considerations, or the availability of funding for implementation. The absence of financial considerations leads us to question whether the load reductions specified by the proposed source allocations are financially feasible. The importance of such financial considerations will become more obvious during the development of the Phase II WIPs. (ref. Section 5.3 Phase 5 Chesapeake Bay Watershed Model).

Example:
Both state WIPs propose the use of highly ambitious levels of urban stormwater retrofits (Maryland, directly through several proposed options for reducing urban stormwater WLAs; Virginia, indirectly, through one of the EPA's proposed backstopping actions). Most COG members will not be able to achieve such levels without a significant amount of cost-share assistance. Moreover, on a cost-per-pound basis, urban stormwater retrofits are among the most costly ways of reducing nutrient pollution compared to other practices.

Recommendation #1: Provide a Comprehensive Cost Analysis

We recommend that each state, as part of its Phase II WIP and Two-Year Milestone development and in consultation with local governments, include a thorough cost analysis for urban stormwater retrofits as part of an overall analysis of cost affordability and cost effectiveness among the different sources of pollution and reduction practices. This analysis should be designed so that every local government with MS4 responsibilities will know just how much capital and operating expenses they will face as a part of their implementation responsibilities. The degree to which stormwater retrofits are required to achieve load allocations should not be set in the TMDLs themselves nor in the Phase I WIPs and should be periodically adjusted based on adaptive management principles (see Comment # 6) (ref. Section 10. TMDL Implementation & Adaptive Management).

2. EPA and States Must Enhance/Expand Funding

Existing funding mechanisms are insufficient to meet the proposed project implementation schedules in some jurisdictions, and the time required to augment funding may result in implementation delays. Federal and State leadership to assure funding support for locally based watershed implementation plans is necessary to meet the ambitious timelines currently proposed for Bay and tidal tributary restoration.

In particular, in most COG local jurisdictions, existing funding mechanisms are insufficient to meet the TMDL/WIP assumption that 60/70 percent of progress toward final allocations will occur by 2017or that 100 percent of all necessary implementation will occur by 2025. The funding shortfall is exacerbated by the current economic downturn. According to both the National League of Cities and the National Association of Counties, their member governments continue to reduce their budgets from 2009-2010 levels.

More specifically, Maryland WIP proposals to achieve either a 30- 40- or 50-percent retrofit of existing older developed areas in Phase I MS4 communities by 2017 (See Section 5.2.2 of Maryland WIP document) and EPA's backstop proposal to achieve 50 percent retrofit by 2017 for all older urban lands in the Bay watershed portion of Virginia (ref. Section 8. WIP Evaluation & Draft Backstop Allocations, pp. 8-13 through 8-14) cannot be achieved in these time frames without substantial federal and/or state funding assistance.

Example: Various parties have recently tried to estimate the costs of stormwater retrofitting. These estimates are subject to a great deal of variability because there is to date insufficient experience with actual retrofit projects in the region and because there is not a clear-cut definition of what is meant by the term. For COG's Maryland and Virginia members, staff estimated the total amount of pre-1985 urban pervious and impervious acres using Version 5.2 of the watershed model. Using a fairly conservative average cost of $88,000/acre from the Center for Watershed Protection, staff estimated the cost of retrofitting 50 percent of this acreage at $5.45 billion in initial capital costs. This estimate did not take account of the annual operations and maintenance costs for new facilities nor for the cost of acquiring land, since retrofitting at this extensive level cannot be accomplished strictly with projects on public land. Nor does it account for whatever retrofit requirements may be imposed on pervious land.

Recommendation #2: Provide Stormwater Funding Support

Both the wastewater and agricultural sectors have received and continue to receive significant federal and/or state support for implementation. Urban stormwater, by contrast, has received little such funding. We recommend that the proposed urban stormwater cost analysis be matched with a concrete proposal for federal and state support for retrofitting stormwater controls. One possibility is to resurrect the proposal for a federal-state financing authority for the Bay that was originally advanced by the Chesapeake Bay Blue Ribbon Financing Panel in 2004 and that would be capitalized by $15 billion in federal and state matching funds. If such support is not forthcoming, and no changes are allowed to be made to the current deadlines, it is likely that we will subsequently recommend initiation of a Use Attainability Analysis, based on the questionable feasibility, economic and otherwise, of urban stormwater retrofitting.

3. EPA and States Must Address Time Constraints

EPA and the states have set several deadlines for the implementation of practices to achieve TMDL allocations without consulting with local governments (60 percent of all needed implementation by 2017 -- or 70 percent in the case of Maryland -- and 100 percent of implementation by 2025 – or by 2020 in Maryland.) These deadlines do not take into account the amount of time local governments will need to put into place the level of practices that the TMDLs/WIPs propose. Local governments will need to develop local implementation plans, determine budget needs, pass new ordinances, and potentially raise new funds before they can even begin to design and build new projects. Design and construction schedules also will be subject to various scheduling constraints.

Recommendation #3: Do Not Mandate Specific Retrofit Levels in the TMDL or the Phase I WIPs

Neither the TMDL nor the state Phase I WIP documents should include reference to a specific level of stormwater retrofit for either MS4 or non-MS4 urban areas. (See recommendation #7 for more detail.)

4. EPA and States Must Address Physical Feasibility and Other Possible Constraints

With respect to urban retrofits, there are a number of potential constraints to implementation beyond those related to funding and time. These include lack of a mechanism for requiring retrofits on private property and, in dense urban areas, a number of siting issues.

Example:
EPA should ensure that under the terms of the TMDL and the state WIPs, that operational constraints that impact the ability of wastewater

Example:
In a recently completed study of retrofit opportunities in its portion of the Little Pimmit Run watershed[1], a consultant for Arlington County concluded that construction of retrofits at the 40 identified sites, regardless of cost, would only provide treatment for 5 – 9 percent of the land in the watershed. The potential for nutrient and flow reductions is similarly limited. Retrofit studies currently underway in five additional subwatersheds[2] have identified 205 potential projects that, if feasible, would provide treatment for 2 percent to 20 percent of the land area in these subwatersheds.

[1] "Little Pimmit Run Watershed Retrofit Plan," Center for Watershed Protection, March 2010
[2] "Gulf Branch, Donaldson Run, Torreyson Run, Crossman Run, Westover Branch Watershed Retrofit Plans," Center for Watershed Protection, drafts under development, October 2010

Together, these retrofit studies have evaluated 18% of the County land area, with nearly 250 projects that, if feasible, would treat approximately 13% of the total watershed area evaluated to date. Extrapolated County-wide, an estimated 1,400 individual retrofit projects will be identified as the County completes this study of its retrofit potential. Therefore, the points to emphasize in addition to cost are the limited overall retrofit potential and the large number of projects necessary to achieve that potential. Planning and designing each project in a dense urban setting takes extensive time.

Recommendation #4: Assess Physical Constraints to Implementation

In conjunction with local governments, the states and EPA should establish a study of potential physical constraints to implementation progress. This assessment should also incorporate the potential implications of Climate Change impacts on water quality, hydrology, and process effectiveness (ref. Section 10.5 Factoring in Effects from Continued Climate Change). This could provide another basis (see recommendation #2) for initiating a Use Attainability Analysis as appropriate.

5. EPA Should Change the Deadline for Completion of Phase II WIPs

Although EPA's current schedule calls for states to develop and submit Phase II WIPs by June 1, 2011, most local governments have barely begun to assess implementation options because the draft Phase I WIPs only allocate to the state or major basin level and it is not clear what practices or levels of reduction will be needed at the local level. It is also uncertain the degree to which such sub-allocations will be deemed 'enforceable' (ref. recent EPA presentation to PSC), and hence what level of controls are mandated. Planning has also been held up by delays in providing final load estimates from the Bay Program's Watershed Model (WSM) (ref. Section 5.8 Phase 5 Chesapeake Bay WSM). There also needs to be sufficient time to address the inconsistencies between the TMDL and Phase I WIP assumptions.

The Anne Arundel County Pilot WIP has demonstrated the complexities of assigning allocations and hence responsibility and defining accountability when there is a complex mix of federal, state, local and private entities. When this is coupled with uncertainties about the availability of the WSM to define local loads, it is unrealistic to expect credible Phase II WIPs to be prepared by the current June 1, 2011 due date. Further, the states will be facing a significant challenge in the critical task of effectively engaging local stakeholders who will be affected by the Phase II WIPs. This, too, will be problematic given the current timeline. (ref. Section 7. Reasonable Assurance & Accountability Framework, Section 10. TMDL Implementation & Adaptive Management & 10.3 Future Modifications to the Chesapeake Bay TMDL).

Example:
COG itself, as well as its member governments, has access to Phase 5.3 WSM output to assist in planning efforts. However, this output is of limited value given the reality that urban land use and load estimates will change, probably significantly, once the Bay Program completes its WSM upgrade. EPA originally promised that final watershed model data for use in the TMDLs would be available in late 2009; the latest information from EPA staff is that the new version of the WSM will not be available until sometime in early 2011.

Recommendation #5: Extension of the Phase II WIP Due Date

We request that the due date for the draft Phase II WIPs be changed to December 30, 2011, and the due date for the final Phase II WIP be changed to June 30, 2012. Doing so would allow time for stakeholders to become familiar with the revised watershed model and for the various parties to complete the studies of cost effectiveness, cost feasibility and physical feasibility that we are recommending. In the meantime, local government implementation actions, such as construction of enhanced nutrient removal facilities at

wastewater plants, would continue. This expanded time frame will also allow for greater public participation at the local level which will be particularly important with the more localized load reduction targets.

6. EPA and States Need to Provide Local Governments and Wastewater Utilities with as Much Flexibility as Possible

Because the state Phase I WIPs do not address reductions or implementation practices at the local level, it is not clear how much flexibility local governments and other stakeholders will have in pursuing implementation plans. The states should build in, and EPA should accommodate, the ability for local governments to reallocate assigned loads among different source sectors (e.g., between stormwater, wastewater, and air loads), for local governments and utilities to trade allocations and load reductions among different wastewater plants, for local governments and utilities to be able to take advantage of viable trading programs outside their jurisdictional boundaries. However, we have major concerns as to whether such trading programs will prove to be successful, given their very limited track records to-date and the many uncertainties associated with determining what baseline conditions must be achieved before which trading can actually occur. Also, while EPA's TMDL (ref. Section 10.2 Water Quality Trading, and Appendix S. Offsets for New or Increased Loadings of Nitrogen, Phosphorus, and Sediment to the Chesapeake Bay Watershed), and the state Phase I WIPs clearly support trading – there are very few specifics regarding how trading from all sectors can actually be implemented, or what the baseline assumptions are.

Recommendation #6A: Conceptual Support for Maryland's and Virginia's Nutrient Trading Proposals

We support the expansion of Virginia's Chesapeake Bay Nutrient Credit Exchange Program, as proposed in the WIP (Virginia WIP, pp. 3 - 6), but much more detail must be developed before it can be ascertained whether the program provides local governments with a viable trading option. We support expansion of Maryland's Policy on Nutrient Cap Management and Trading (Maryland WIP, p. 3-10) to incorporate trades between sectors. We propose that assessments of the success of inter- and intra-state trading programs be made part of the 2-year milestone reporting process and that state implementation plans be adjusted accordingly.

Recommendation #6B: Federal Trading Guidelines Should Define Minimal Requirements & Greater Efforts Should be Made (by both federal and state) to Provide Incentives and Remove Barriers to Trading

It is important that the specific details of how trading can be implemented be defined so that local governments and utilities understand the range of options available to them and know how to implement them. And it is appropriate for EPA's TMDL to define minimal requirements to ensure that equity and water quality issues are addressed consistently across the Bay watershed; but the details of such trading programs and requirements should be defined in the state WIPs and programs. Also, there are many regulatory and programmatic issues that various sectors face when considering trading. EPA and the states should work together to eliminate barriers and develop incentives to help make trading a robust and viable process in the Bay watershed.

Another issue of concern is the complexity and potential lack of accuracy of the Bay Program's WSM when used to generate load estimates at the county or land-river segment level. We do not believe that the WSM should be the main tool to determine accountability at the local level (ref. Section 5.8 Phase 5 Chesapeake Bay WSM).

Recommendation #6C: Provide for Tools other then the WSM to Gauge Implementation Progress
The states and EPA should allow local governments to use other approaches than use of the WSM to assess their implementation progress.

7. EPA and States Should Avoid Locking Extensive Stormwater Retrofits into Place at this Point in the Process

For all the reasons cited above -- lack of cost-benefit analysis; lack of viable funding mechanisms; uncertainties regarding the accuracy of local loading assumptions (ref. Section 5.8 Phase 5 Chesapeake Bay WSM), and the existence of timing, physical feasibility and other constraints -- it is premature and possibly self-defeating for the TMDL/Phase I WIP documents to propose specific levels of stormwater retrofits. Doing so would violate EPA's reasonable assurance standard since implementation levels cannot be assured at this time. It may or may not be possible to do so in the Phase II WIPs, depending on the extent to which these questions have been answered and the various issues addressed (ref. Section 7.1 Reasonable Assurance, & 7.2 Accountability Framework). Also, there are still many questions regarding the accuracy of loads attributed to the stormwater sector; in particular, whether loads outside of the MS4 areas contribute loads to those sectors.

Recommendation #7: Do Not Mandate Specific Retrofit Levels in the TMDL or the Phase I WIPs
Neither the TMDL nor the state Phase I WIP documents should include reference to a specific level of stormwater retrofit for either MS4 or non-MS4 urban areas. This will allow time for the analyses recommended in Comments # 1 and #4 to be conducted before establishing specific retrofit requirements. Retrofitting requirements in future MS4 permits should consider local fiscal and physical realities.

8. EPA Needs to Build Flexibility into its Backstopping Approach

Given the limited time available for states to revise their WIPs in response to public comment, it is unrealistic to expect that states will be able to address all of the potential gaps in their WIPs that EPA has identified. Accordingly, the use of federal backstopping actions to revise the allocations should be delayed. EPA also should allow sufficient time for initiatives that address gaps to actually be implemented at the state level (e.g., state legislatures cannot approve programs and funding initiatives to assist local governments by December 31, 2010) before imposing backstops (ref. Section 8.3 Draft Backstop Allocations).

Recommendation #8A: Refrain from Imposing Backstop Provisions before the Phase II WIPs are Completed or if Other Regulatory Measures Aren't Completed In Time
EPA should refrain from issuing any backstop requirements until the Phase II WIPs are completed and approved; backstops addressing retrofit requirements for MS4 permittees should be contingent on the availability of appropriate cost-share funding assistance. (See comment #2.) In addition, if expected reductions in Clean Air Act measures are not implemented as envisioned (ref. Section 4.7.2 Atmospheric Deposition, and Section 5.9.3 Atmospheric Loads) it would not be appropriate for EPA to automatically impose backstop measures to compensate for those gaps – especially given EPA's stated commitment to ensure those air reduction goals are met.

Recommendation #8B: Provide Flexibility for Addressing Growth between Sectors
EPA should maximize the options available for local governments and utilities to be able to address the demands of growth in those sectors (i.e., wastewater and stormwater) where they have responsibilities, without invoking premature application of federal 'backstop' measures (ref. Section 10.1 Future Growth).

9. EPA and States Need to Make Sure Growth Policies Support Infill Development

The population of the COG region is forecast to increase 20 percent, or by about 1 million people, between 2010 and 2030. Most of this growth will occur as infill development in existing urban areas already served by municipal wastewater treatment. As the Maryland WIP notes in Section 3-1, having the growth occur in service areas for existing wastewater treatment plants produces much lower loads to offset than would allowing the growth to occur outside of sewered areas. As the Maryland WIP also notes, the increased wastewater plant load from new growth to 2030 can be accommodated within proposed plant allocations determined by 2010 design flows and various targets for enhanced nutrient removal implementation. It is also imperative that this growth capacity not be compromised by backstopping and other actions by EPA or the states that would reduce the current proposed WWTP allocations in response to the failure of other sectors to achieve their assigned reductions (ref. Section 10.1 Future Growth, & Section 7.2.4 Federal EPA Actions, p. 7-11).

Recommendation #9: Provide Incentives to Encourage Growth in Existing Urban Areas

In concept, we support the growth and offset strategy that Maryland has outlined in its WIP (Section 3.2), which proposes to provide lower disincentives for growth in areas that are already more highly developed than in other areas. We urge Virginia to develop a system of incentives/disincentives that also seeks to direct growth to existing urban areas.

10. EPA and States Must Ensure that Efforts to Meet Bay Water Quality Standards are Consistent with Meeting Other Environmental Objectives

EPA and the states must recognize that at the local level addressing water quality requirements is only one of a number of equally compelling mandates and that, within the environmental arena, there are potential conflicts among these mandates. This is especially true when entities must meet mandates derived from EPA's own regulations (e.g., Clean Water Act, Safe Drinking Water Act, and Clean Air Act) and programs (e.g., Climate Change initiatives).

Example:
Many wastewater treatment technologies intended to implement ENR-level nutrient removal are by their very nature energy and chemical intensive processes – and hence tend to increase the net quantity of greenhouse gases. There are already many efforts underway by COG's local governments and wastewater utilities to find ways to minimize those energy needs and increase energy reuse; but it will take some time to evaluate and to implement such practices. These efforts are critical to the region not only for enhancing nutrient reduction costs/impacts, but also to help reduce the electricity generation needs in the region, to support regional efforts to comply with Clean Air Act regulations and reduce greenhouse gas emissions. (Note that COG's member governments also have made a voluntary commitment to reduce greenhouse gas emissions 20 percent below 2005 levels by 2025.)

Example:
The UOSA plant in Virginia serves multiple and simultaneous purposes by helping the region address water quality in the Occoquan Reservoir as well as downstream waters, and to help maintain water quality conditions within the Reservoir to protect and enhance its use as a drinking water source. Requiring higher levels of nitrogen reductions from the UOSA plant without accounting for both environmental and human health needs would pitch one environmental goal against another and risk failing to meet both objectives in a balanced manner.

Recommendation #10: Articulate Policies to Reconcile Competing Environmental Mandates

Consistent with the stated objectives of adaptive management and incorporating the best available science, EPA and the states should have clear policies and mechanisms in the TMDLs and the WIPs to allow for the reconciliation of such competing environmental mandates, and to avoid a one-size-fits-all approach when it is clearly not appropriate (ref. Section 10. TMDL Implementation & Adaptive Management, 10.5 Factoring in Effects from Continued Climate Change).

11. EPA and States Should Require Greater 'Reasonable Assurance' from Agricultural Sources and Avoid Placing Undue Burden on Regulated Entities

State WIPs should provide more reasonable assurance that agricultural-based load allocations can be met so as to avoid federal imposition of backstopping measures on regulated sources such as MS4 stormwater permittees and municipal wastewater treatment plants. This is especially important because cost effectiveness studies have indicated that many agricultural practices can reduce pollution at a lower cost/pound than stormwater practices, particularly retrofits.[3]

Example:
As EPA noted in its evaluations of the Virginia draft WIP, that document fails to provide enough assurance that the level of agricultural BMP implementation assumed by the plan will actually occur. That is one of the major reasons why the EPA proposed highly ambitious levels of stormwater retrofits in its backstop options. Given that these proposed levels would be prohibitively expensive to achieve and may be unobtainable for other reasons, such as scheduling and site constraints, a more realistic approach would be to achieve more reductions from implementation of agricultural practices (ref. Section 7. Reasonable Assurance & Accountability Framework).

Recommendation #11: Pursue Additional Reductions from Non-regulated Sources

EPA and the states should outline various strategies for pursuing additional reductions from non-regulated sources and quantify the amount of 'unregulated' loads that are not currently being required to be reduced. This should include very clear programmatic and potential policy approaches, potential enhanced funding, and use of regulatory options as they may exist – as well as the potential load reductions that could be achieved through such measures so that policy makers can fully evaluate how best to approach this issue (ref. Section 4.3 Pollutant Source Sector Contributions, & 4.7 Nonpoint Source Load Summaries). Ultimately achieving and maintaining the Bay's water quality will require that all loads are fully accounted for and managed to some degree.

12. EPA Needs to Require Federal Sector to Match or Exceed State and Local Standards

Consistent with the President's Chesapeake Executive Order (#13508) and the Fiscal Year 2011 Action Plan, the federal sector should "lead by example" and be held accountable to the highest overall reduction efforts. This goes beyond the currently defined air reductions and is particularly critical for federal facilities in urban areas that contribute stormwater-related loads to local waters. It should also be made clear that state facilities also must meet local requirements. Federal implementation efforts should be part of the formal 2-year milestone reporting process.

[3] (See "Cost Effectiveness Strategies for the Bay: Smart Investments for Nutrient and Sediment Reduction," Chesapeake bay Commission, 1997)

Example:
In the District of Columbia, federal facilities represent about 30 percent of the overall area of the city. Clearly, city-wide target for stormwater load reductions under the provisions of the city's proposed MS4 permit are unobtainable without the assistance of various federal agencies in proposed retrofit, green roofing and tree planting initiatives. In recent correspondence, GAO took the position that the federal government was not obligated to pay the District of Columbia's impervious surface fee. This position violates the spirit of "lead by example" and should be reversed.

Recommendation #12: Provide an Inventory of Stormwater Management on Federal Facilities
We request that EPA and the states take the lead in conducting an inventory of how federal facilities throughout the watershed manage stormwater. The states and EPA should set reduction targets for these facilities, including roads and highways, which will exceed those that may be required of local jurisdictions (ref. Section 10.4 Federal Facilities & Lands). The federal and state government experience in trying to meet these targets will provide a test case for the feasibility of achieving TMDL targets for other parties such as local governments.

13. EPA's TMDL Should Clearly Portray Source Allocations as 'Preliminary', Confirm Its Ability to Revise Deadlines and Allocations for the WIPs and TMDLs as Needed for Consistency, and Correct Errors in the TMDL and WIPs – Consistent with its Adaptive Management Principles

Source allocations for nonpoint sources, particularly agriculture and urban stormwater, should be regarded as preliminary to reflect the uncertainty inherent in the current version of the Bay Program's Watershed Model and questions about how loads were allocated among these sources. The draft TMDL documentation states (see page 10-4) that EPA will modify its nutrient and sediment allocations in response as new WSM data is available from version 5.3.2 of the watershed model. Given that some of the changes being made to the model will affect estimates of the amount and type of urban land, it is likely that the various state-basin waste load allocations for urban stormwater in the draft TMDL are inaccurate. EPA should state more clearly that the Phase I WIP source allocations are provisional and subject to change. In addition, it is clear that the draft TMDL has made sub-allocations to various wastewater plants that are not consistent with the state WIP, that not all CSO loads have been fully accounted for, and that there are other errors that will need to be reflected in revised TMDLs and WIPs. We are also aware of inconsistencies in input decks versus state WIP assumptions, resulting inconsistencies between the TMDL and the WIPs themselves (ref. Section 5.8 Phase 5 Chesapeake Bay Watershed Model).

Recommendation #13A: Reconcile Model Input Assumptions and Correct Allocations and WIPs as Needed
EPA and the states need to review and verify all modeling assumptions regarding input decks, and revised the allocations for sectors, facilities, and others as necessary to ensure consistency between the TMDL allocations and WIP assumptions.

Recommendation #13B: Revisit Allocations during Development of the Phase II WIPs
We support Maryland and Virginia's intention to revisit the allocations during the development of the Phase II WIPs. In issuing new estimates and proposing new allocations, EPA and the states should allow local governments and other stakeholders adequate time to review these numbers; we propose that parties have at least 120 days to do so (ref. Section 10. TMDL Implementation & Adaptive Management, and Section 11. Public Participation).

Recommendation #13C: Determine What the Implications are of Using Estimated 2010 Land Use on Calibrations and Ultimately Allocations and Revise TMDL Loads and WIPs as Appropriate

EPA modeling assumptions utilized an estimated 2010 land use scenario as part of its efforts to set base loads for the TMDLs, and therefore the determinations of relative effectiveness (ref. Section 5.5 Chesapeake Land Change Model, and 5.7 Scenario Builder). As a result, the actual 2010 loads were not verified through the model's calibration procedures. The results of these actual loads need to be accounted for in the Phase II WIPs.

14. EPA and the States Should Clearly Distinguish Between Achieving Water Quality Standards and Achieving Implementation' Goals

It has been known for many years that actual water quality improvements lag behind BMP implementation. This is due in part to the gap in time between implementation of many land-based practices and their impact on surface water quality. The current TMDL language fails to make these distinctions clear, so that expectations of progress may not be realistic and or may be misunderstood by citizens.

Recommendation #14: State that Implementation Progress Will Be Measured by Implementation Rates

The TMDL documentation should clearly state that progress toward attainment will be measured by progress toward the implementation levels EPA and the states estimate is necessary to eventually achieve water quality standards and that progress in improving actual water quality may lag behind this implementation progress (ref. Section 6.4 Assessing Attainment of Proposed Amended Chesapeake Bay WQS, and Section 7.2. Accountability Framework).

15. EPA & States Should Enhance Dialogue with Local Governments and Other Stakeholders.

Local governments and utilities were rarely consulted during development of the TMDL or state WIP documents and have little time in which to comment. As the process moves into Phase II WIP development, both federal and state officials need to do more to hear from local governments and utilities that will bear much of the burden of these implementation measures. Ultimately, all levels of government must work together to justify these efforts and the financial demands on ratepayers and the general public.

Recommendation #15: Issue Process for Phase II WIP Development, with Enhanced Stakeholder Participation

Maryland and Virginia should issue a detailed process for the development of Phase II WIPs as soon as possible and well before the publication of the final TMDL documentation. And EPA should make it clear that local input must be addressed to ensure that the issues of reasonable assurance and feasibility have been worked out with those entities actually responsible for implementation, and allow sufficient time for that input to occur (ref. Section 11. Public Participation).